



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2021-0254; FRL-9347-02-OCSPP]

Asbestos Part 2 Supplemental Evaluation including Legacy Uses and Associated Disposals of Asbestos; Final Scope of the Risk Evaluation to be Conducted under the Toxic Substances Control Act; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with implementing regulations for the Toxic Substances Control Act (TSCA), EPA is announcing the availability of the final scope of the risk evaluation to be conducted for Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos. In the Part 2 risk evaluation for asbestos, EPA will evaluate the conditions of use of asbestos (including other types of asbestos fibers in addition to chrysotile) that EPA had excluded from Part 1 as legacy uses and associated disposals, as well as any conditions of use of asbestos-containing talc. The final scope for this chemical substance includes the conditions of use, hazards, exposures, and the potentially exposed or susceptible subpopulations that EPA plans to consider in conducting the risk evaluation for this chemical substance.

ADDRESSES: The docket, identified by docket identification (ID) number EPA-HQ-OPPT-2021-0254, is available online at <https://www.regulations.gov> or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW, Washington, DC. Additional information about visiting the docket is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Peter Gimlin, Existing Chemical Risk Management Division, Office of Pollution Prevention and

Toxics, Environmental Protection Agency (Mailcode 7404T), 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001; telephone number: (202) 566-0515; email address: gimlin.peter@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to entities that manufacture (including import) a chemical substance regulated under TSCA, 15 U.S.C. 2601 *et seq.*, (e.g., entities identified under North American Industrial Classification System (NAICS) codes 325 and 324110). The action may also be of interest to chemical processors, distributors in commerce, and users; non-governmental organizations in the environmental and public health sectors; state and local government agencies; and members of the public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities and corresponding NAICS codes for entities that may be interested in or affected by this action.

B. What is the Agency's authority for taking this action?

The final scope document is issued pursuant to TSCA section 6(b)(4)(D) and TSCA implementing regulations at 40 CFR 702.41(c)(8).

C. What action is the Agency taking?

EPA is publishing the final scope of the risk evaluation for Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos. Through the TSCA risk evaluation process, EPA will determine whether the chemical substance presents an unreasonable risk of injury to health or the environment without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible

subpopulation identified as relevant to the risk evaluation by the Administrator, in accordance with TSCA section 6(b)(4).

II. Background

In June 2016, EPA designated asbestos as one the first 10 chemicals to undergo risk evaluation under TSCA, as amended by Frank R. Lautenberg Chemical Safety for the 21st Century Act. EPA initially focused the risk evaluation for asbestos on chrysotile asbestos as this is the only asbestos fiber type that is currently imported, processed, or distributed in the United States. However, in late 2019, the court in *Safer Chemicals, Healthy Families v. EPA*, 943 F.3d 397 (9th Cir. 2019) held that EPA's Risk Evaluation Procedural Rule (82 FR 33726, July 20, 2017 (FRL-9964-38)) should not have excluded "legacy uses" (i.e., uses without ongoing or prospective manufacturing, processing, or distribution) or "associated disposals" (i.e., future disposal of legacy uses) from the definition of conditions of use, although the court did uphold EPA's exclusion of "legacy disposals" (i.e., past disposal).

Following this court ruling, EPA continued development of the risk evaluation focused on chrysotile asbestos and determined that the risk evaluation for asbestos would be issued in two parts. The risk evaluation for Asbestos Part 1: Chrysotile Asbestos was released in January 2021 (86 FR 89, January 4, 2021; FRL-10017-43), allowing the Agency to expeditiously move into risk management for the unreasonable risk identified in Part 1. Under the consent decree in the case *Asbestos Disease Awareness Organization et al v. Regan et al*, 4:21-cv-03716 (N.D. Cal.), EPA is required to publish a final Part 2 Risk Evaluation for Asbestos on or before December 1, 2024. The final scope of the Risk Evaluation for Asbestos Part 2 is the subject of this notice.

The purpose of a risk evaluation is to determine whether a chemical substance presents an unreasonable risk to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation, under the conditions of use (15 U.S.C. 2605(b)(4)(A)). As part of this process,

EPA must evaluate both hazards and exposures for the conditions of use; describe whether aggregate or sentinel exposures were considered and the basis for consideration; not consider costs or other nonrisk factors; take into account where relevant, likely duration, intensity, frequency, and number of exposures; and describe the weight-of-scientific-evidence for hazards and exposures (15 U.S.C. 2605(b)(4)(F)). This process will culminate in a determination of whether or not the chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use (15 U.S.C. 2605(b)(4)(A); 40 CFR 702.47).

III. Information and Comments Received on the Draft Scope

In the *Federal Register* of December 29, 2021 (Ref. 1), EPA announced the availability of the draft scope document for the Part 2 risk evaluation for asbestos to be conducted under TSCA and invited public comments on EPA's draft scope document, including additional data or information relevant to the chemical substance or that otherwise could be useful to the Agency in finalizing the scope of the risk evaluation. To the extent that comments provided information on conditions of use, as well as other elements of the draft scope document, those comments and other submitted information (*e.g.*, relevant studies, assessments, information on degradation products, and information on conditions of use) were used to inform revisions to the draft scope document and may be considered in subsequent phases of the risk evaluation process.

EPA received 38 unique submissions, including comments from potentially affected businesses or trade associations, environmental and public health advocacy groups, and members of the general public.

Comments addressed the overall approach to the risk evaluation process (*e.g.*, collection, consideration, and systematic review of relevant information), the specific elements of the scope document (*e.g.*, human hazard, exposure, and potentially exposed or susceptible subpopulations), information specific to asbestos (*e.g.*, physical-chemical properties and fate, relevant studies, and conditions of use), and topics beyond the draft scope document phase of the TSCA section 6 process (*e.g.*, risk management). EPA considered those comments, as applicable and appropriate,

in developing the final scope document. Concurrently with the publication of the final scope document, EPA is publishing a response to comments document that contains a comprehensive summary of and response to public comments received on the draft scope document for Part 2 of the Risk Evaluation for Asbestos. The comprehensive response to comments document is available in the docket EPA-HQ-OPPT-2021-0254 (Ref. 2).

IV. References

The following is a listing of the documents that are specifically referenced in this *Federal Register* notice. The docket for this action includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket. For assistance in locating these referenced documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos; Draft Scope of the Risk Evaluation to be Conducted under the Toxic Substances Control Act; Notice of Availability and Request for Comments. *Federal Register*. (86 FR 74088, December 29, 2021) (FRL-9347-01-OCSP).

2. EPA. EPA Response to Public Comments Received on the Draft Scopes of the Risk Evaluations under the Toxic Substances Control Act (TSCA) for: Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos (June 2022).

Authority: 15 U.S.C. 2601 *et seq.*

Dated: June 24, 2022.

Michal Freedhoff,

Assistant Administrator,

Office of Chemical Safety and Pollution Prevention.

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